IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 15TH FEBRUARY 2007 / 26TH MAGHA 1928

Crl.MC.No. 4127 of 2006()

C.C.NO.707/06 OF THE ADDL.CHIEF JUDICIAL MAGISTRATE, TRIVANDRUM

PETITIONER: ACCUSED.

P.SAJITH KUMAR, S/O.RAMAKRISHNAN,
LEELA FANCY CENTRE, WARD NO.80/9,
KNK COMPLEX, NSR ROAD, SAIBABA COLONY,
COIMBATORE-11, TAMIL NADU.

BY ADV. SMT.K.SRIJA

RESPONDENTS: COMPLAINANT & STATE.

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1. I.P.SOMASEKHARA NAIR,
S/O. PARAMESWARAN NAIR, MANAGER,
M/S.KERALA CHITTY FUND, PAN AFRICAN PLAZA,
PULIMOODU,THIRUVANANTHAPURAM.

2. STATE OF KERALA, REP. BY ITS PUBLIC
PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY ADV. SRI.R.RAMADAS
PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 15/02/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.4127 of 2006

Dated this the 15th day of February 2007

O R D E R

The petitioner faces indictment in a prosecution under Section 138 of the Negotiable Instruments Act. Cognizance has been taken on the basis of the complaint filed by the complainant who describes himself as the Manager of Kerala Chitty Fund. It is admitted at all hands that prior to the initiation of proceedings, notice of demand under Section 138 of the Negotiable Instruments Act was issued. The same was duly received and reply was issued to the said notice on behalf of the petitioner/accused. A copy of the said notice and the reply notice have been placed before me by the learned counsel. In the complaint, it is alleged that the cheque in question is issued for the discharge of a debt due to the complaint.

2. The petitioner has not appeared before the learned Magistrate. The petitioner has come to this court with the prayer that the powers under Section 482 Cr.P.C may be invoked to quash the proceedings initiated against the petitioner under Section 138 of the Negotiable Instruments Act.

3. What is the ground? The short ground raised in this petition is that the cheque has not been issued for the due discharge of any legally enforcible debt/liability. The short contention raised by the petitioner is that there is no legally enforcible debt/liability to discharge which the cheque has been issued. According to the petitioner, the price money paid to a chit subscriber cannot be reckoned as a legally enforcible debt/liability which the subscriber should pay to the chitty company. Reliance is placed on certain precedents of this aspect.

4. I have gone through the notice of demand and the reply notice. There is not a whisper of a contention raised in the reply notice that the cheque has been issued as security for the price money in the chitty paid to the petitioner/accused. In the absence of even a contention to that effect in the reply notice, I am certainly of the opinion that powers under Section 482 Cr.P.C cannot be invoked to quash the present proceedings. It is for the petitioner to raise the said defence in the trial - that the cheque was not issued for the due discharge of any legally enforcible debt/liability and was handed over only as security to

the chitty company when the price money was paid to the petitioner. That plea must be raised and established in the course of the trial and anticipating such a plea which is not even specifically raised in the reply notice, proceedings initiated cannot obviously be quashed.

5. In the result, this Criminal Miscellaneous Case is dismissed. But I may hasten to observe that the dismissal of this Criminal Miscellaneous Case will not in any way fetter the rights of the petitioner to raise all appropriate and relevant contentions in the course of the trial before the court below. I make it clear that I have not intended to express any opinion on the disputed question and I take the view only that the proceedings are not liable to be quashed by invoking the powers under Section 482 Cr.P.C.

6. The learned counsel for the petitioner submits that there is a warrant pending against the petitioner. The said warrant shall not be executed till 28/02/2007. The petitioner shall appear before the court below on or before that day.

(R.BASANT, JUDGE)

jsr

R.BASANT, J

C.R.R.P.No.

ORDER

21ST DAY OF JULY 2006